

are located and that issue received most of the attention from both parties in the hearing and briefs. However, the issue as framed by CenturyTel is much broader than the question of a single POI.

Position of the Parties

(a) Charter

Charter's position is that under §251(c)(2), as interpreted by the FCC, it is entitled to interconnect with Century at any technically feasible point, including the option to interconnect at a single POI per LATA. The critical portion of the statute is § 251(c)(2)(B): *at any technically feasible point within the carrier's network*. In 47 C.F.R. § 51.305, any technical feasible point is to include at a minimum:

- (i) The line-side of a local switch;
- (ii) The trunk-side of a local switch;
- (iii) The trunk interconnection points for a tandem switch;
- (iv) Central office cross-connect points;
- (v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and
- (vi) The points of access to unbundled network elements as described in §51.319.

While the statute and rules do not specifically mention a right to interconnect at a single POI within a LATA, Charter's position is supported by language in the FCC's *Southwestern Bell-Texas § 271 Decision* where the FCC held that the statute's intent is to allow CLECs the option to select the "most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination."

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The FCC further found that a CLEC “has the option to interconnect at only one technically feasible point in each LATA.”²⁸

The *Southwestern Bell-Texas §271 Decision* was cited in a FCC *Virginia Arbitration Order* to support the FCC’s decision to accept the CLEC’s position that they were entitled to request a single POI in a LATA in their interconnection agreements with Verizon.²⁹ The FCC also proposed to add the single POI requirement to its rules in rulemaking notices issued in 2001 and in 2005, but the proposed rule has yet to be formally adopted.³⁰

The remainder of Charter’s position is that the exception to the single POI based on technical feasibility does not apply to the CenturyTel exchanges where it wishes to interconnect because CenturyTel had an interexchange network to carry access traffic that can be adapted to carry local traffic to a single POI.

(b) CenturyTel

CenturyTel has the burden of showing the inapplicability of what seems to be a straightforward FCC interpretation of §251(c)(2) that entitles Charter to a single POI per LATA. CenturyTel attempts to do this by noting that the original FCC finding on a single POI came in a Section 271 decision based on a contract. Because Section 271 only applies to former Bell Operating companies (BOCs) and not to smaller independent ILECs, CenturyTel’s position is

²⁸ Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to provide In-Region, InterLATA Services in Texas*, 15 F.C.C.R. 18,354, 18,390, ¶ 78 (2000) (*Southwestern Bell-Texas § 271 Decision*).

²⁹ Memorandum Opinion and Order, *In the Matter of Petition of WorldCom, Inc. et al, Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 F.C.C.R. 27,039, 27,064, ¶ 52 (2002) (*Virginia Arbitration Award*).

³⁰ Notice of Proposed Rulemaking, *Developing a Unified Inter-carrier Compensation Regime*, 16 F.C.C.R. 9610, 9634, 9650, ¶¶ 72, 112 (2001); and Further Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, 20 F.C.C.R. 4685, 4728, ¶ 92 (2005).

that the single POI decision only applies BOC's. Similarly, CenturyTel pointed out that LATAs were created so BOCs could separate local service which was not open to competition at the time from intrastate and interstate access service, which had been opened to competition. CenturyTel is not a BOC and asserts that the concept of LATAs only applies to BOCs and for this reason a decision about a single POI per LATA would not apply to CenturyTel.

CenturyTel's second distinction from the FCC's single POI position is that proof of technical feasibility is not the only §251(c)(2) interconnection requirement and that § 251(c)(2)(C) limits Charter to an interconnection arrangement *that is at least equal in quality to that provided by the local exchange provider to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection*. CenturyTel asserts that the § 251(c)(2)(C) provision means that CenturyTel is not required to provide interconnection to Charter that would be superior to what it provides to itself or other providers. This position was adopted by the 8th Circuit court in decisions made in 1997 and again in 2000,³¹ and by arbitration awards by a number of state commissions.³² CenturyTel further asserts that interconnecting with Charter outside of its local exchange network, which would be necessary to provide Charter with a single POI per LATA, would be a superior form of interconnection to what CenturyTel provides for its own local exchange traffic. CenturyTel concludes that it is not required to provide Charter with a single POI per LATA because it is not required to provide this superior form of interconnection.

³¹ *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) (*IUB I*) and *Iowa Utils. Bd. v. FCC*, 219 F. 3d, 744, 758 (8th Cir.2000) (*IUB II*).

³² See the brief of CenturyTel pages 69 to 72 for a discussion of arbitration awards in Arkansas, Michigan, Colorado and Oregon.

CenturyTel also provided evidence that it does not have facilities in any one of its non-rural local affiliates that could be used to connect to Charter at all potential points within a LATA.³³ This leads to CenturyTel's third distinction regarding the single POI rule, which is that Charter is required to establish interconnection agreements with each CenturyTel affiliated company and cannot assume that all CenturyTel-affiliated companies are a single entity. This means that even if the Commission decided that the FCC's single POI rule applies in this situation, it would only apply on an individual company basis and not on a holding company basis.³⁴ In other words, at most the single POI requirement would mean that there should be one POI per LATA within the network of each of CenturyTel's three non-rural affiliates.³⁵

Proposed Contract Language

Charter and CenturyTel each propose certain language additions to Art. V., section 2.2.2. In the DPL each party also proposes language for sections other than 2.2.2 as well. The Panel evaluates those other sections in its determinations on other issues.

2.2.2 Points of Interconnection (POIs): A Point of Interconnection (POI) is a point in the network where the Parties deliver Local Traffic to each other, and also serves as a demarcation point between the facilities that each Party is responsible to provide. Requirements for a Local POI are set forth in Section 3.3.2 of this Article. In some cases, multiple POI(s) may be necessary to provide the best technical implementation of Interconnection requirements to each End Office within a CenturyTel company's service area. ****CLEC may interconnect at any single technically feasible point on the CenturyTel network within a LATA. The technically feasible point at which **CLEC elects to interconnect will be the established POI for such LATA.**

³³ Century Reply Brief (R. Br.) 37.

³⁴ Century R. Br. 39.

³⁵ Century R. Br. 40-41.

Discussion

There was considerable discussion by both parties about the nature of CenturyTel's interexchange network and whether it can currently carry interexchange traffic between all of CenturyTel's exchanges. It appears to the Panel that CenturyTel does have an interexchange network which carries access traffic and in some instances EAS traffic between most of its local exchanges. During the period when this interconnection agreement will be in force, Charter does not plan on providing service in all of CenturyTel's non-rural exchanges, and there is evidence that CenturyTel's interexchange network would make it technically feasible to use a single POI to serve the exchanges where it intends to compete, even if there are other isolated CenturyTel exchanges.³⁶

The critical issue for the Panel is whether the existence of an interexchange backbone, owned by CenturyTel, but not by its individual local affiliates, is enough to create a mandate for a single POI among all of the exchanges of CenturyTel non-rural affiliated companies within each LATA. The Panel is not persuaded that the concept of a LATA does not apply to CenturyTel and the Panel believes that it is required to follow the FCC's interpretation of § 251. The Panel, however, finds that each CenturyTel affiliate is a separate legal entity under Wisconsin law and that Charter needs to establish separate interconnection points within the network of each affiliate. This should provide no barrier to Charter's ability to compete with CenturyTel because it already has existing POI's where it competes with CenturyTel for local service.

The Panel also does not interpret § 251 to mandate that CenturyTel go outside its local exchange network in order to interconnect with Charter. To the extent that Century has extended

area service (EAS) between its local exchanges, Charter is entitled to a single point of interconnection with those exchanges, but where CenturyTel has a local exchange that does not have local facilities that connect to other CenturyTel exchanges, Charter is only entitled to a POI within CenturyTel's local network that serves that exchange.

To the extent CenturyTel argued that CenturyTel is not required to provide interconnection to Charter that would be superior to what it provides to itself or other providers, the Panel determines that the record is conflicting on the issue as to whether Charter's proposed interconnection is superior or inferior. In this Issue 18, CenturyTel argues Charter's proposed interconnection would be superior in that CenturyTel would be "responsible for transport for that new local service to distant locations beyond that for any other local traffic for which CenturyTel is currently responsible."³⁷ However, in Issue 19 in relation to Charter's proposed interconnection, CenturyTel argues, "this network approach is inferior in that it creates significant concerns about network management, traffic measurement, and proper compensation."³⁸ Accordingly, the Panel simply decides that interconnection must be within CenturyTel's affiliate's network.

Issue 18 Award

The Panel awards the following variation on CenturyTel's language for section 2.2.2 of the agreement.

2.2.2 Points of Interconnection (POIs): A Point of Interconnection (POI) is a point within a CenturyTel-Affiliate company's network where the Parties deliver Local Traffic to each other, and also serves as a demarcation point between the facilities that each Party is responsible for.

³⁶ Charter Brief (Br.) 72-74.

³⁷ Tr. 724.

³⁸ Tr. 754.

The Panel declines to award the rest of the language for Issue 18 requested by CenturyTel because the Panel was not sufficiently briefed on this language and it appears that the provisions requested may depend upon what is awarded in other issues. The Panel expects that given its award of a variation on CenturyTel's language for Section 2.2.2 and the awards on other related issues, the parties can reach their own agreement regarding the other sections in the contract.

Issue 19: Charter version: Should Charter's right to utilize indirect interconnection as a means of exchanging traffic with CenturyTel be limited to only those instances where Charter is entering a new service area or market?

CenturyTel version: Should the Agreement between the Parties limit the voluntary utilization of third party transit arrangements to a DS-1 level of traffic?

The two parties' statement of the issue creates overlaps with other issues, including Issue 18 concerning the Point of Interconnection (POI). Further the proposed contract language and briefs also contain further differing issues. The Panel has sorted out the overlaps in the following manner. The first issue is whether Charter's right to use indirect interconnection is limited to entering new service areas. CenturyTel further raises the issue whether a Percent Local Use (PLU) factor is needed for billing purposes when indirect interconnection is used. The Panel will evaluate whether or not indirect interconnection is voluntary, and the use of a PLU factor in this Issue 19.

Second, there is a further issue as to whether to limit indirect interconnection to a threshold of traffic, and if so, the statement of the threshold, such as DS-1 level of traffic. Third, CenturyTel also raises an issue whether the existing trunking arrangements should be allowed to be abandoned. Issue 22 will address thresholds at which direct interconnection is applicable and whether existing interconnections can be abandoned.

The Panel will also relate its decision on this issue to its decision on Issue 18 that the POI is required to be within each individual CenturyTel Affiliate company's network.

Positions of the Parties

(a) Charter

Charter believes it has a statutory right under § 251(a) to utilize indirect interconnection as a means of exchanging traffic with CenturyTel. Charter believes there is no statutory or regulatory limitation on the use of indirect interconnection. Charter did not address CenturyTel's issues concerning percent local use and maintaining existing direct interconnections. Charter does point out that CenturyTel's proposal to use a percent local use demonstrates that CenturyTel must offer indirect interconnection to some other carrier in order to suggest this concept.

(b) CenturyTel

In light of CenturyTel's statement of the Issue 19 as primarily based on the assumption that indirect interconnection is voluntary, much of CenturyTel's discussion of indirect interconnection was contained in Issue 18. CenturyTel equates the use of indirect interconnection as creating a POI outside its territory. As the POI defines the parties' financial obligations,³⁹ indirect interconnection could be interpreted to be a requirement that CenturyTel is

³⁹ Both parties agree to this concept. The following are references in the record demonstrating this agreement. Per Charter witness Gates, "The fact is: the POI establishes the demarcation point for cost responsibility. The parties have agreed to that concept, and Mr. Watkins has affirmed that the principle should be applied to this Agreement." (Tr. 562.)

Per Charter witness Gates, "The FCC recognized when it codified Rule 703(b), that the financial responsibilities for interconnection for the exchange of traffic should be borne solely by each carrier on its side of the POI. This rule prohibits carriers from shifting cost of transporting traffic to the POI to other carriers. In order words, each carrier is responsible for the costs of delivering its traffic to other carriers for termination." (Tr. 430.)

Per CenturyTel witness Watkins, "The framework for interconnection is that once the POI is established, each Party is responsible for the facilities on its side of the POI, and each Party is responsible for the delivery of its originating local traffic to the other Party at the POI." (Tr. 762.)

47 C.F.R. § 51.703 Reciprocal compensation obligations of LECs

(b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

responsible for the cost to deliver traffic beyond its network. CenturyTel believes that the provision of § 251(a) cannot be interpreted to create a greater obligation than § 251(c) and associated rules through which CenturyTel is responsible for costs on CenturyTel's side of a POI that is located within its territory. CenturyTel further raises the question whether a Percent Local Use (PLU) factor is needed for billing purposes when indirect interconnection is used. CenturyTel also expresses concern that Charter should not be allowed to abandon the existing trunking arrangements.

Proposed Contract Language

The Panel attempts to identify the specific language each party has proposed relative to the specific issue of whether there are limits on the use of indirect interconnection and application of a PLU. Both parties provide varying language in this regard for Article V, Interconnection, Transport and Termination, section 3.3.1.1 and 3.3.1.4.

3.3.1.1 Either Party may deliver Local Traffic and ISP-bound Traffic indirectly to the other for termination through any carrier to which both Parties' networks are interconnected directly or indirectly. The Originating Party shall bear all charges payable to the transiting carrier(s) for such transit service with respect to Local Traffic and ISP-bound Traffic.

3.3.1.4 Local Traffic and ISP-bound Traffic exchanged by the Parties indirectly through a transiting carrier shall be subject to the same Reciprocal Compensation, if any, as Local Traffic and ISP-bound Traffic exchanged through Direct Interconnection.

3.3 Network Connection and POI

3.3.1 Indirect Network Connection

3.3.1.1 Indirect Network Connection is intended only for de minimis traffic associated with **CLEC "start-up" market entry into a CenturyTel local exchange. Therefore Indirect Network Interconnection will be allowed only on routes between CenturyTel end offices and a **CLEC switch in instances where, and only so long as, none of the triggers set forth in Section 3.3.2.4 of this Article have been reached.

3.3.1.4 To the extent a Party combines Local Traffic and Jointly-Provided Switched Access Traffic on a single trunk group for indirect delivery through a tandem, the originating Party, at the terminating Party's request, will declare quarterly Percentages of Local Use (PLUs). Such PLUs will be verifiable with either call summary records utilizing Calling Party Number (CPN) information for jurisdictionalization of traffic or call detail samples. Call detail or direct jurisdictionalization using CPN information may be exchanged in lieu of PLU, if it is available. The terminating Party should apportion per minute of use (MOU) charges appropriately.

Discussion

The Panel agrees with Charter that it has a statutory right under § 251(a) to utilize indirect interconnection. The Panel finds no basis for limiting indirect interconnection to "start-up" market entry only. However, the Panel also agrees with CenturyTel that 47 U.S.C. § 251(a) does not set forth any particular standards under which carriers must negotiate or arbitrate terms of indirect interconnection.⁴⁰ The Panel further agrees that the use of indirect interconnection also raises the concern that mixed types of traffic can be delivered over indirect forms of interconnection; that is traffic subject to access charges could be mixed with traffic subject to reciprocal compensation for local traffic under 47 U.S.C. § 251(b).

⁴⁰ The standards for negotiation and arbitration contained in 47 U.S.C. § 252 are applicable to the requirements of 47 U.S.C. § 251(b) and (c).

The Panel does not agree that the use of indirect interconnection creates a POI outside CenturyTel's territory. The POI has been interpreted to define each the party's financial obligations. Even though Charter chooses to use indirect interconnection, Charter still must establish a POI within the network of each CenturyTel Affiliate company per the Panel's decision on issue 18. In the case of transit-type indirect interconnection arrangements, the POI would be the point at which a transit service provider delivers traffic to a point within the CenturyTel Affiliate company network, such as CenturyTel's local switch.

Accurate jurisdictional identification is necessary for proper billing. CenturyTel proposed the use of a PLU factor. Traffic delivered through indirect interconnection is still subject to a determination as to whether the traffic is local or non-local. PLU factors are commonly used in interconnection agreements for the purpose of differentiating between local and non-local traffic. It is reasonable for a PLU factor to be used when indirect interconnection is used.

Issue 19 Award

The Panel determines that when indirect interconnection is used, the POI that determines financial responsibility will be the point at which the transit service provider delivers traffic to a point within the CenturyTel affiliate company's network. A percent local use factor will be used to determine whether traffic is subject to access charges or reciprocal compensation.

The Panel expects that, given the above description of its award and its award on related issues, the parties can reach their own agreement on redrafting the contract.

Issues 20 and 23:⁴¹ Charter version: Should Charter be entitled to lease interconnection facilities from CenturyTel at cost-based rates pursuant to Section 251(c)(2) of the Act?

⁴¹ Issue only applicable to CenturyTel non-rural companies. While the DPL lists Issue 23, the DPL refers Issue 23 back to Issue 20.

CenturyTel version: How long should the Agreement provide that the Parties negotiate cost-based rates for such [direct connection] facilities before they may seek Commission intervention?

This issue concerns the terms for pricing of interconnection facilities also known as direct connection facilities and the time period to negotiate rates before Charter could seek Commission resolution of any pricing dispute. Reviewing the proposed contract language, it further concerns interim rates, the use of a relative use factor (RUF) in the interim rates while rates are being negotiated, and the language for a true-up of the interim rates following negotiations.

Positions of the Parties

(a) Charter

Charter characterizes the issue as whether CenturyTel is obligated to lease to Charter interconnection facilities at cost-based rates pursuant to 47 U.S.C. 251(c)(2). In implementing the outcome of this decision, Charter also seeks terms for interim rates that apply a relative use factor (RUF), a true-up back to the effective date of the interconnection agreement, and a 90-day time period to negotiate before Charter could seek Commission resolution of any dispute.

Charter believes the pricing standard applicable to § 251(c)(2), interconnection is TELRIC. Charter believes its position on this issue has been clear. Charter asks the Panel to affirm TELRIC is the applicable pricing standard. Charter believes CenturyTel's attempts to argue that the actual pricing standard is not currently before the Panel is "simply a poorly disguised attempt to avoid its obligation to provide these facilities at a TELRIC rate."

Charter believes that it is inappropriate to simply use CenturyTel's access rates as interim rates and wants to apply the RUF as an approximation of TELRIC rates based on experience

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with TELRIC rates. Charter believes its proposed 90-day⁴² time frame is a reasonable time period “to engage in good faith negotiations” and believes CenturyTel’s proposed six-month negotiation “drags out the resolution process.” Charter seeks to bring the issue directly to the Commission at the end of that time period and not engage in further dispute resolution processes before seeking that resolution. Charter acknowledges that CenturyTel stated that its language includes a true-up process, but Charter believes CenturyTel’s language is vague and Charter seeks clearer language regarding the true-up.

(b) CenturyTel

CenturyTel believes the only two sub-issues before the Panel are “(1) a six-month time frame for negotiating cost-based rates for direct connection facilities, and (2) the use of the Article 20 dispute resolution process for any remaining, unresolved pricing issues.” CenturyTel believes the cost-based standard is not an issue before the Panel and Charter’s position “constitutes an end run around the negotiation process.” CenturyTel proposes to make arguments in such a negotiation process based on paragraph 140 the FCC’s *Triennial Review Remand Order*.⁴³ CenturyTel also refers to a Seventh Circuit court decision which contained the following language: “What the FCC said in ¶ 140 is that ILECs must allow use of entrance facilities for interconnection at cost-based rates. TELRIC is a cost-based rate, though not the only one.”⁴⁴ CenturyTel does not expand its argument on this point but asserts that the cost-based standard is not an issue before the Panel.

⁴² DPL includes 30 days, but testimony and briefing state that a 90-day time frame is sought.

⁴³ Order on Remand, *In the Matter of Unbundled Access to Network Elements*, 20 F.C.C.R. 2533 (2005) (*Triennial Review Remand Order* or *TRRO*).

⁴⁴ *Illinois Bell Tel. Co. v. Box*, 526 F. 3d 1069, 1072 (7th Cir. 2008) (*Box*).

CenturyTel believes its proposed six-month period will afford opportunities for the necessary give and take of a negotiation process. CenturyTel believes there is no need to shorten the time frame, as there will be a true-up process once the final rates are determined. CenturyTel believes the dispute resolution process of Article 20 will bring "a finite and determined set of procedures to the resolution of Issue 20." CenturyTel believes the proposed RUF is "an arbitrary method" that "end-runs the negotiations" and is "wholly unnecessary" in light of the true up.

Proposed Contract Language

Charter and CenturyTel each propose certain language additions for Art. V., Interconnection and Transport and Termination, section 2.3.1., and Art. XI, Pricing, section III., Interconnection Pricing, sections C. and D.

2.3.1 Leased Facility Interconnection ("LFI")

2.3.1.1 Where facilities exist, Charter may lease facilities from CenturyTel at cost-based rates pursuant to Section 251(c)(2), pursuant to CenturyTel's applicable Tariff identified in Section II, Article XI (Pricing), may lease facilities from a third party, or may construct or otherwise self-provision facilities.

[Charter's latest proposal:]

Where facilities exist, Charter may lease facilities from CenturyTel at cost-based rates pursuant to Section 251(c)(2). Upon the Effective Date of this Agreement, the Parties shall attempt to negotiate such cost-based rates for up to thirty (30) days. If the Parties cannot reach agreement with respect to such cost-based rates within 30 days of the Effective Date, either Party may seek to resolve the dispute by filing an action with the Commission to determine the appropriate rate pursuant to Section 251(c)(2) of the Act. If a party files such an action with the Commission, that action, including resolution of any permissible appeals thereto, shall be the sole mechanism for resolving the dispute. Until such time as the Commission finally determines the appropriate rate pursuant to Section 251(c) (2), such facilities shall be provided pursuant to the CenturyTel Tariff identified in Section II, Article XI (Pricing).

After the Commission finally determines the appropriate cost-based rate pursuant to Section 251(c) (2), the rate for such facilities will be trued-up back to the Effective Date of this Agreement. Charter also may lease facilities from a third party, or may construct or otherwise self-provision facilities.

[CenturyTel's latest proposal:]

Where facilities exist, Charter may lease facilities from CenturyTel. Such facilities shall be provided pursuant to the CenturyTel Tariff identified in Section II, Article XI (Pricing), which currently governs

Charter's leasing of such facilities pursuant its prior interconnection agreement with CenturyTel. The rates set forth in such Tariff shall be deemed "interim rates." Upon the Effective Date of this Agreement, the Parties shall attempt to negotiate new rates for such facilities, which rates shall be cost-based pursuant to Section 251(c)(2) of the Act and shall replace the interim rates once agreed upon by the Parties. If the Parties cannot reach agreement with respect to such new rates within six (6) months of the Effective Date of this Agreement, either Party may seek to resolve the dispute pursuant to the formal dispute resolution procedures set forth in Article III, Section 20. Charter also may lease facilities from a third party, or may construct or otherwise self-provision facilities.

C. Entrance Facilities / Leased Facility Interconnection

**Rates set forth in Section(s)
26.2.2(A)(1), 26.2.2(A)(2) and
26.3 of Intrastate Access
Service Tariff-CenturyTel of
the Midwest-Wisconsin, LLC
Intrastate Access Tariff #1**

Cost Based Rates

D. Initial Factors:

Initial Originated Local Traffic Factor	50%
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Discussion

In relation to federal statutes, rules, and orders, the Panel determines that the applicable statute is § 251(c)(2). However, nothing in the FCC's implementing rules or orders specifically identifies how to address the time period to negotiate a provision within an approved interconnection agreement, or interim rates, or true-ups of interim rates. As the parties have chosen to submit a contract dispute to the Commission for adjudication, the parties are necessarily choosing to use Wis. Stat. § 196.199 to resolve those portions of their disagreement, which in turn, as indicated in the notice, allows consideration of other provisions of Wis. Stat. ch. 196 as may be pertinent hereto. In making its determinations herein, the Panel considered the factors listed in Wis. Stat. § 196.03(6), in particular, (a) promotion and preservation of

competition consistent with Wis. Stat. ch. 133 and Wis. Stat. § 196.219; (b) promotion of customer choice; and (f) promotion of efficiency and productivity; with the other factors not being relevant to the issue at hand.

While Charter uses the term “interconnection facilities” and CenturyTel uses the term “direct connection facilities” (also known as entrance facilities) in their respective statements of the issue, the language proposed by both parties recognizes the applicability of § 251(c)(2) to the facilities in question. Charter’s statement of the issue, “Should Charter be entitled to lease interconnection facilities from CenturyTel at cost-based rates pursuant to Section 251(c)(2) of the Act?” clearly put the pricing standard before the Commission. CenturyTel has had its opportunity to address the issue. It is reasonable to construe this issue broadly and clarify the pricing standard applicable to § 251(c)(2) interconnection with this award. If CenturyTel wanted to argue that the facilities are interconnection, but not interconnection under § 251(c)(2),⁴⁵ CenturyTel should have said just that. If CenturyTel wanted to argue that the facilities are not required to be unbundled under § 251(c)(3), Unbundled Access, CenturyTel should have said just that. If CenturyTel wanted to assert that some other cost-based standard was applicable to § 251(c)(2) interconnection, it has had its opportunity to do so.⁴⁶ Failure to clear up CenturyTel’s self-created ambiguity would only serve to delay implementation of the rates

⁴⁵ CenturyTel did make this argument in regard to the facilities in question in Issues 34 and 35 regarding 911. In relation to Issue 34 regarding the pricing of end office trunks for purposes of delivering 911 traffic to CenturyTel’s selective routers, CenturyTel also argued that the facilities are not interconnection under 47 U.S.C. § 251(c)(2), and the Panel agreed that the end office trunks in question in that issue were not interconnection under § 251(c)(2).

⁴⁶ To the extent it has determined that certain facilities do not meet the necessary and impair standard of § 251(d)(2) to require a network element to be unbundled under § 251(c)(3), the FCC has applied the standard of just and reasonable rates per 47 U.S.C. § 201. The FCC has also applied the just and reasonable rate standard of § 201 to access under § 271(c)(2)(B) for network elements no longer required to be unbundled under § 251(c)(3) but for which access is still required by Bell Operating Companies under § 271(c)(2)(B). Just and reasonable rates under § 201 are also considered to be cost-based rates. However, in this issue all parties agree the facilities at issue are interconnection under § 251(c)(2), making these alternative pricing methods inapplicable.

required under federal statute and rule.

The Panel agrees with Charter witness' statement of authority for the TELRIC pricing standard.⁴⁷ The pricing standard specifically applicable to interconnection for purposes of § 251(c)(2) is the pricing standard contained in § 252(d)(1).⁴⁸ That statute's pricing standard applies to network elements and interconnection. The FCC has determined that the pricing standard applicable to network elements is TELRIC per 47 C.F.R. § 51.503.⁴⁹ Hence, the TELRIC standard applies to interconnection under 47 U.S.C. § 251(c)(2).⁵⁰ Even though CenturyTel pointed to the statement that "TRIC is a cost-based rate, though not the only one," in the *Box*, at 1072, it has not developed any argument based on this reference. That statement was peripheral to the Seventh Circuit's principal holding, that TRIC may be applied under § 251(c)(2): "It is enough for us to conclude that federal law permits a state agency to use the TRIC method to regulate the price for the interconnection services that an ILEC must furnish under § 251(c)(2)." *Id.* It is clearly allowable for the Panel to determine that the pricing standard applicable to § 251(c)(2) interconnection is TRIC.

⁴⁷ Tr. 581.

⁴⁸ § 252(d) PRICING STANDARDS (1) INTERCONNECTION AND NETWORK ELEMENT CHARGES
Determinations by a State commission of the just and reasonable rate for interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and just and reasonable rate for network elements for purposes of subsection (c)(3) of such section-

(A) Shall be-

(i) Based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable) and

(ii) Nondiscriminatory, and

(B) May include a reasonable profit.

⁴⁹ § 51.503 General pricing standard.

(a) An incumbent LEC shall offer elements to requesting telecommunications carriers at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

(b) An incumbent LEC's rates for each element it offers shall comply with the rate structure rules set forth in §§ 51.507 and 51.509, and shall be established, at the election of the state commission—

(1) Pursuant to the forward-looking economic cost-based pricing methodology set forth in §§ 51.505 and 51.511.

Panel

However, the discussion in *Box* also addresses the scope of permissible uses for TELRIC-priced entrance facilities as follows:

What then of the original (and principal) use of an entrance facility: linking networks to allow CLEC-to-ILEC traffic (and ILEC-to-CLEC traffic)? The FCC stated:

[O]ur finding of non-impairment with respect to entrance facilities does not alter the right of [CLECs] to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, [CLECs] will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the [ILEC's] network.

Triennial Review Remand Order at ¶ 140. The state commission relied on this passage when ordering AT&T to make entrance facilities available at TELRIC prices to CLECs for interconnection.

AT&T protests that this nullifies the FCC's order. What's the point of specifying that CLECs cannot demand access to entrance facilities as unbundled network elements, AT&T inquires, if state commissions can turn around and require the same access at the same price anyway? The answer, as the district court observed, is that CLECs do not enjoy the "same" access to entrance facilities under the state commission's decision as they did before the FCC's order. Until then CLECs could use entrance facilities for both interconnection and backhauling. Under the state's order, CLECs use entrance facilities exclusively for interconnection, just as the FCC said in ¶ 140. The state commission tells us that ILECs can detect and block any attempted use of an entrance facility for backhauling. (Every carrier, ILEC or CLEC, must be able to determine the traffic's destination in order to route it accurately.)

Box, at 1072.

The *Box* decision does differentiate between entrance facilities used exclusively for interconnection and entrance facilities used for both interconnection and backhaul. Accordingly, while the Panel determines that the pricing standard applicable to § 251(c)(2) interconnection is TELRIC; the Panel also clarifies that TELRIC-priced entrance facilities are to be used

⁵⁰ The Panel rejects any confusion injected by CenturyTel regarding "bottleneck" facilities. The "bottleneck" necessary and impair standards of 47 U.S.C. § 251(d)(2) only apply to access to unbundled network elements and do

exclusively for interconnection. This determination will (a) promote and preserve competition consistent with Wis. Stat. ch. 133 and Wis. Stat. § 196.219; (b) promote customer choice; and (c) promote efficiency and productivity.

Regarding the remaining sub-issues, the Panel awards a 90-day time frame to negotiate. This should provide a reasonable period of time to negotiate in good faith. The Panel agrees with Charter that CenturyTel's true-up language is vague and Charter's language is clearer. The true-up is intended to cover the time period back to the effective date of the interconnection agreement. The Panel further agrees with Charter that the application of the RUF is a reasonable approximation of TELRIC rates based on experience with TELRIC rates. In relation to the use of dispute resolution, as this award already includes a 90-day time frame to negotiate, the Panel determines that it is not reasonable to require further dispute resolution processes under Article 20 before the matter can be brought to the Commission for resolution. These decisions regarding the procedures for implementation of cost-based rates under § 251(c)(2) will serve to (a) promote and preserve competition consistent with Wis. Stat. ch. 133 and Wis. Stat. § 196.219, (b) promote of customer choice; and (c) promote of efficiency and productivity.

Issue 20 Award

The Panel awards Charter's proposed language for Art. V., Interconnection and Transport and Termination, section 2.3.1, substituting 90 days for 30 days. The Panel clarifies that the pricing standard applicable to § 251(c)(2) interconnection is TELRIC. Such TELRIC-priced entrance facilities are to be used exclusively for interconnection. The Panel expects that given its award here along with the award on other issues that the parties can reach their own agreement on redrafting the remaining sections of the contract.

not apply to interconnection. Also see Issue 21 regarding the forms of interconnection: meet point, and collocation.

Issue 21: Charter version: Should Charter be allowed to deploy one-way trunks at its discretion; and without having to assume the entire cost of interconnection facilities used to carry traffic between the Parties' respective networks?

CenturyTel version: There are two separate issues presented in Issue 21: (a) Under what terms and conditions should one-way trunks be used for the exchange of traffic within the scope of this Agreement? (b) Regardless of whether one-way or two-way trunks are deployed, where should Points of Interconnection (POIs) be located and what are each party's responsibilities with respect to facilities to reach the POI?

This issue concerns whether or not one-way trunks can be required; which carrier has the discretion of choosing one-way trunks; and which carrier is financially responsible for each section of one-way trunking when one-way trunks are used.

Positions of the Parties

(a) Charter

Charter believes it has a federal right to deploy one-way trunks. Charter believes the FCC rules place the selection of one-way versus two-way trunks in the hands of the connecting competitive local exchange carrier, subject to issues of technical feasibility. 47 C.F.R.

§ 51.305(f). Charter disputes CenturyTel's proposal that any disagreement regarding one-way trunks should be subject to the dispute resolution process in Article III, section 20. Charter believes this proposal would improperly give CenturyTel veto power over Charter's right to select one-way trunks.

(b) CenturyTel

CenturyTel is concerned that Charter's proposed language could be interpreted to require CenturyTel to be financially responsible for one way trunks that are not on CenturyTel's side of the properly established POI. CenturyTel states that its proposal would only require CenturyTel to provide for one-way trunks to and from the POI and not to provide one-way trunks from the

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POI to a Charter switch at some distant location, such as Stevens Point or Fitchburg, outside CenturyTel's network. CenturyTel believes that Charter's proposal, under which each party would be responsible to deploy one-way trunks to the other party's switch, would "undermine the method by which a POI must be properly established as required under Section 251(c)(2) of the Act." CenturyTel believes Charter's position on this issue is inconsistent with Charter's position on Issue 18 regarding financial responsibility. CenturyTel believes Charter's proposal would require it to unlawfully create a superior form of interconnection by making CenturyTel financially responsible for facilities outside CenturyTel's network. CenturyTel's proposed language would require that any disagreement regarding one-way trunks would be subject to the dispute resolution process in Article III, section 20.

Proposed Contract Language

Charter and CenturyTel each propose certain language additions for Art. V., section 3.2.3.

3.2.3 Notwithstanding the preceding paragraph 3.2.2 above, the Parties recognize that certain technical and billing issues may necessitate the use of one-way trunking for an interim period. Either Party may provision its

own one-way trunks. Regardless of whether one-way or two-way facilities are provisioned Notwithstanding any other provision of this Article V, (including those provisions which establish that each Party is individually responsible to provide facilities to the POI), where one-way trunks are deployed then each Party is responsible for establishing any necessary interconnection facilities, over which such one-way trunks will be deployed, to the other Party's switch. Subject to the terms herein, each Party is individually responsible to provide facilities to the POI. The Parties will negotiate implement the appropriate trunk configuration, whether one-way or two-way giving consideration to relevant factors, including but not limited to, existing network configuration, administrative ease, any billing system and/or technical limitations and network efficiency. Any disagreement regarding appropriate trunk configuration shall be subject to the dispute resolution process in Section 20 of Article III.

Discussion

The Panel evaluates this issue based upon the duty of an incumbent local exchange carrier to provide interconnection under § 251(c)(2) and the associated financial responsibilities of the carriers under that section. The Panel determines that Charter mischaracterizes this issue as compliance with 47 C.F.R. § 51.305(f), which merely requires an ILEC to provide two-way trunking upon request. The rule was based on the following analysis:

We conclude here, however, that where a carrier requesting interconnection pursuant to section 251(c)(2) does not carry a sufficient amount of traffic to justify separate one-way trunks, an incumbent LEC must accommodate two-way trunking upon request where technically feasible. Refusing to provide two-way trunking would raise costs for new entrants and create a barrier to entry. Thus we conclude that if two-way trunking is technically feasible, it would not be just, reasonable, and non-discriminatory for the incumbent LEC to refuse to provide it.⁵¹

⁵¹ First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15,499, 15,612-13, ¶ 219 (1996) (subsequent history omitted).

The rule, 47 C.F.R. § 51.305(f), in no way provides CLECs with a federal right to deploy one-way trunks. The supporting narrative above explains that an incumbent's imposition of a requirement to use one-way trunks could raise costs to new entrants and create a barrier to entry. Thus the rule requires an incumbent to provide two-way trunks to avoid imposition of an inefficient network configuration on a competitor. To the extent any inference can be made from this rule regarding one-way trunks, it would seem, reciprocally, that a competitor should not be able to impose an inefficient network configuration upon an incumbent by demanding one-way trunks.

The record better supports CenturyTel's characterization that Charter seeks terms that could be used to undermine the method by which a POI must be properly established as required under § 251(c)(2). The Panel agrees with CenturyTel that it should not be financially responsible to deploy a one-way trunk from the meet point interconnection to the other party's switch. CenturyTel is only financially responsible to deploy one-way trunks to and from its switch and the meet point. The following are provisions of statutes and FCC rules that support this determination.

47 C.F.R. § 51.321 Methods of obtaining interconnection and access to unbundled elements under section 251 of the Act.

(a) Except as provided in paragraph (e) of this section, an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.

(b) Technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited⁵² to:

(1) Physical collocation and virtual collocation at the premises of an incumbent LEC; and

⁵² The "but are not limited to" language also comes into play in this award. In issue 20, entrance facilities are also a form of § 251(c)(2), interconnection.

- (2) Meet point interconnection arrangements.

47 C.F.R. § 51.5 Terms and Definitions.

Meet point interconnection arrangement.

A meet point interconnection arrangement is an arrangement by which each telecommunications carrier builds and maintains its network to a meet point.

Interconnection. Interconnection is the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic.

Technically feasible....

...The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. ...

47 U.S.C. § 251(c)(2)(B)

(c) **ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.** – In addition to the duties contained in subsection (b) each incumbent local exchange carrier has the following duties:

(2) **INTERCONNECTION** –The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-

(B) at any technically feasible point within the carrier's network.

(emphasis added)

Under these statutes and rules, CenturyTel would be financially responsible to modify its facilities and build and maintain its network to a "meet point" or a point of collocation. The meet point or collocation would be within CenturyTel's network. Charter's proposal would require CenturyTel to be financially responsible for facilities beyond the meet point and all the way to Charter's distant switch. The Panel's interpretation of the FCC rules, in the circumstance where one-way trunks are used, is that Charter would be financially responsible to lease, or build and maintain one-way trunks to and from its switch and the meet point, and likewise CenturyTel would be financially responsible to lease, or build and maintain one-way trunks to and from its switch and the meet point. Thus, it would be Charter's financial responsibility for the network costs for the full distance of both one-way trunks (to the extent traffic can be expected in both